

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MICHAEL SHERMAN ALLEN,)	
)	
Plaintiff,)	2:19-cv-01258-RJC
)	
vs.)	
)	District Judge Robert J. Colville
CO ROBERT HOLLOWOOD, CO PAUL)	Magistrate Judge Maureen P. Kelly
GAFFEY, SGT. CHRISTOPHER)	
SHELDON, KERRI CROSS, LIEUT.)	
ALBERT WOOD, SGT. MICHAEL)	
PIERCE, RHONDA HOUSE, GRIEVANCE)	
COORDINATOR; WAYNE INNISS,)	
STAFF ASSISTANT; DORINA VARNER,)	
CHIEF GRIEVANCE OFFICER; MARK)	
CAPOZZA, FACILITY MAN.; CO JUAN)	
MACIAS, JOHN/JANE DOES,)	
)	
Defendants.)	

ORDER OF COURT

Before the Court is the Honorable Maureen P. Kelly's January 26, 2021 Report and Recommendation (ECF No. 56), which recommends that the Corrections Defendants' Motion to Dismiss Amended Complaint (ECF No. 50) be granted in part and denied in part. Objections to Judge Kelly's Report and Recommendation were due by February 9, 2021. No objections were filed, and the matter is now ripe for disposition.

With respect to dispositive matters, the reviewing district court must make a de novo determination of those portions of the magistrate judge's report and recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, "even absent objections to the report and

recommendation, a district court should ‘afford some level of review to dispositive legal issues raised by the report,’” and has “described this level of review as ‘reasoned consideration.’” *Equal Employment Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

Upon consideration of the January 26, 2021 Report and Recommendation (ECF No. 56), it is hereby ORDERED as follows:

The Court accepts and adopts Judge Kelly’s Report and Recommendation in its entirety as the opinion of the Court. The Corrections Defendants’ Motion to Dismiss Amended Complaint (ECF No. 50) is granted as to Count V of Plaintiff’s Amended Complaint (ECF No. 45) against Defendants Wood, House, Capozza, Varner, Inniss, Pierce, and Cross, and is also granted as to Count IV against Defendant Wood. These claims are dismissed without prejudice, and Plaintiff may file a second amended complaint within twenty-one (21) days of this Order. The Motion is denied with respect to all other relief requested. To the extent that Plaintiff does not file a second amended complaint, the remaining Defendants shall file an answer to the remaining claims set forth in Plaintiff’s Amended Complaint (ECF No. 45) within twenty-one (21) days of the expiration of Plaintiff’s deadline for filing a second amended complaint.

BY THE COURT:

s/Robert J. Colville
Robert J. Colville
United States District Judge

DATED: February 19, 2021

cc/ecf: All counsel of record